

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



July 6, 2000

Regulation Package #0999-20

CDSS MANUAL LETTER NO. CWS-00-01

TO: HOLDERS OF THE CHILD WELFARE SERVICES MANUAL, DIVISION 31

Regulation Package #0999-20**Effective 3/28/00****Appendix**

Various nonsubstantive additions to the Welfare and Institutions Code and the Health and Safety Code have been added to the Appendix of Division 31 referencing the Child Welfare Services Program Requirements. These additions do not alter the meaning of the regulations; but only explain the requirements.

These regulations were considered at the Department's public hearing held on December 15, 1999.

FILING INSTRUCTIONS

Revisions to all manuals are shown in graphic screen. The attached pages are to be entered in your copy of the Manual of Policies and Procedures. The latest prior manual letter containing Child Welfare Services manual changes was CWS-99-04.

Page(s)127 through 132
139 through 140
199 through 200**Replace(s)**Pages 127 through 132
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Attachment

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HEALTH AND SAFETY CODE**1502. Facility definitions**

- (a) "Community care facility" means any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, the physically handicapped, mentally impaired, incompetent persons, and abused or neglected children, and includes the following:
- (1) "Residential facility" means any family home, group care facility, or similar facility determined by the director, for 24-hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual.
 - (2) "Adult day care facility" means any facility that provides nonmedical care to persons 18 years of age or older in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis.
 - (3) "Therapeutic day services facility" means any facility that provides nonmedical care, counseling, educational or vocational support, or social rehabilitation services on less than a 24-hour basis to persons under 18 years of age who would otherwise be placed in foster care or who are returning to families from foster care. Program standards for these facilities shall be developed by the department, pursuant to Section 1530, in consultation with therapeutic day services and foster care providers.
 - (4) "Foster family agency" means any organization engaged in the recruiting, certifying, and training of, and providing professional support to, foster parents, or in finding homes or other places for placement of children for temporary or permanent care who require that level of care as an alternative to a group home. Private foster family agencies shall be organized and operated on a nonprofit basis.
 - (5) "Foster family home" means any residential facility providing 24-hour care for six or fewer foster children that is owned, leased, or rented and is the residence of the foster parent or parents, including their family, in whose care the foster children have been placed. The placement may be by a public or private child placement agency or by a court order, or by voluntary placement by a parent, parents, or guardian. It also means a foster family home described in Section 1505.2.
 - (6) "Small family home" means any residential facility, in the licensee's family residence, that provides 24-hour care for six or fewer foster children who have mental disorders or developmental or physical disabilities and who require special care and supervision as a result of their disabilities. A small family home may accept children with special health care needs, pursuant to subdivision (a) of Section 17710 of the Welfare and Institutions Code. In addition to placing children with special health care needs, the department may approve placement of children without special health care needs, up to the licensed capacity.

- (7) "Social rehabilitation facility" means any residential facility that provides social rehabilitation services for no longer than 18 months in a group setting to adults recovering from mental illness who temporarily need assistance, guidance, or counseling. Program components shall be subject to program standards pursuant to Article 1 (commencing with Section 5670) of Chapter 2.5 of Part 2 of Division 5 of the Welfare and Institutions Code.
- (8) "Community treatment facility" means any residential facility that provides mental health treatment services to children in a group setting and that has the capacity to provide secure containment. Program components shall be subject to program standards developed and enforced by the State Department of Mental Health pursuant to Section 4094 of the Welfare and Institutions Code. Nothing in this section shall be construed to prohibit or discourage of placement of persons who have mental or physical disabilities into any category of community care facility that meets the needs of the individual placed, if the placement is consistent with the licensing regulations of the department.
- (9) "Full-service adoption agency" means any licensed entity engaged in the business of providing adoption services, that does all of the following:
- (A) Assumes care, custody, and control of a child through relinquishment of the child to the agency or involuntary termination of parental rights to the child.
 - (B) Assesses the birth parents, prospective adoptive parents, or child.
 - (C) Places children for adoption.
 - (D) Supervises adoptive placements. Private full-service adoption agencies shall be organized and operated on a nonprofit basis.
- (10) "Noncustodial adoption agency" means any licensed entity engaged in the business of providing adoption services, that does all of the following:
- (A) Assesses the prospective adoptive parents.
 - (B) Cooperatively matches children freed for adoption, who are under the care, custody, and control of a licensed adoption agency, for adoption, with assessed and approved adoptive applicants.
 - (C) Cooperatively supervises adoptive placements with a full-service adoptive agency, but does not disrupt a placement or remove a child from a placement. Private noncustodial adoption agencies shall be organized and operated on a nonprofit basis.
- (11) "Transitional shelter care facility" means any group care facility that provides for 24-hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual. Program components shall be subject to program standards developed by the State Department of Social Services pursuant to Section 1502.3.

- (12) "Transitional housing placement facility" means a community care facility licensed by the department pursuant to Section 1559.110 to provide transitional housing opportunities to persons at least 17 years of age, and not more than 18 years of age unless the requirements of Section 11403 of the Welfare and Institutions Code are met, who are in out-of-home placement under the supervision of the county department of social services or the county probation department, and who are participating in an independent living program.
- (b) "Department" or "state department" means the State Department of Social Services.
- (c) "Director" means the Director of Social Services.

1505. Exempt facilities and arrangements

This chapter does not apply to any of the following:

- (a) Any health facility, as defined by Section 1250.
- (b) Any clinic, as defined by Section 1202.
- (c) Any juvenile placement facility approved by the California Youth Authority or any juvenile hall operated by a county.
- (d) Any place in which a juvenile is judicially placed pursuant to subdivision (a) of Section 727 of the Welfare and Institutions Code.
- (e) Any child day care facility, as defined in Section 1596.750.
- (f) Any facility conducted by and for the adherents of any well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend upon prayer or spiritual means for healing in the practice of the religion of the church or denomination.
- (g) Any school dormitory or similar facility determined by the department.
- (h) Any house, institution, hotel, homeless shelter, or other similar place that supplies board and room only, or room only, or board only, provided that no resident thereof requires any element of care as determined by the director.
- (i) Recovery houses or other similar facilities providing group living arrangements for persons recovering from alcoholism or drug addiction where the facility provides no care or supervision.
- (j) Any alcoholism or drug abuse recovery or treatment facility as defined by Section 11834.11.

- (k) Any arrangement for the receiving and care of persons by a relative or any arrangement for the receiving and care of persons from only one family by a close friend of the parent, guardian, or conservator, if the arrangement is not for financial profit and occurs only occasionally and irregularly, as defined by regulations of the state department.
- (l) Any supported living arrangement for individuals with developmental disabilities as defined in Section 4689 of the Welfare and Institutions Code.
- (m) Any similar facility determined by the director.

1505.2 Requirements for Authorization of Placement of Siblings in Foster Care

A licensing agency may authorize a foster family home to provide 24-hour care for up to eight foster children, for the purpose of placing siblings or half siblings together in foster care. This authorization may be granted only if all of the following conditions are met:

- (A) The foster family home is not a specialized foster care home as defined in subdivision (i) of Section 17710 of the Welfare and Institutions Code.
- (B) The home is sufficient in size to accommodate the needs of all children in the home.
- (C) For each child to be placed, the child's placement social worker has determined that the child's needs will be met and has documented that determination.

The licensing agency may authorize a foster family home to provide 24-hour care for more than eight children only if the foster family home specializes in the care of sibling groups, that placement is solely for the purpose of placing together one sibling group that exceeds eight children, and all of the above listed conditions are met.

1522.06. Criminal record check

- (a) Notwithstanding subdivision (k) of Section 1505, upon adoption of a resolution by the board of supervisors of a county, any county child welfare agency may secure from municipal, county or state law enforcement personnel a criminal record through the California Law Enforcement Telecommunications System or an automated mobile and fixed location fingerprint identification system for the purpose of assessing a relative agreeing to receive and care for a minor and any other adult person residing in the home of the relative before placing the minor in the relative's home. Law enforcement shall cooperate with requests for criminal records authorized by this section and shall provide the information to the requesting entity in a timely manner.
- (b) Any law enforcement officer of person authorized by this section to receive the information who obtains the information in the record and knowingly provides the information to a person not authorized by law to receive the information is guilty of a misdemeanor as specified in Section 11142 of the Penal Code.

- (c) Nothing in this section shall preclude the relative or other person living in the relative's home from refuting any of the information obtained by law enforcement if the individual believes the criminal record check revealed erroneous information.
- (d) Use of the California Law Enforcement Telecommunications System authorized by subdivision (a) shall not be applicable after January 1, 2000, or after an automated mobil and fixed location fingerprint identification system is available and accessible to a child welfare agency, whichever comes first.
- (e) For purposes of this section, "relative" means an adult who is related to the child by blood or affinity, including a half-sibling and those adults whose status is preceded by the words "step", "great", "great-great", or "grand" or the spouse of any of these persons, even if the marriage was terminated by death or dissolution.

1596.750. "Child day care facility"

"Child day care facility" means a facility which provides nonmedical care to children under 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. Child day care facility includes day care centers and family day care homes.

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Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a guardianship which has been granted pursuant to Section 366.25 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the minor. If the petition to terminate guardianship is granted, the juvenile court may resume dependency jurisdiction over the minor, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the minor in another permanent placement. At the hearing, the parents may be considered as custodians but the minor shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the minor. The court may, if it is in the interests of the minor, order that reunification services again be provided to the parent or parents.

- (c) If the minor is in a placement other than a preadoptive home or the home of a legal guardian and jurisdiction has not been dismissed, the status of the minor shall be reviewed every six months. This review may be conducted by the court or an appropriate local agency; the court shall conduct the review upon the request of the minor's parents or guardian or of the minor and shall conduct the review 18 months after the hearing held pursuant to Section 366.26 and every 18 months thereafter. The reviewing body shall inquire about the progress being made to provide a permanent home for the minor and shall determine the appropriateness of the placement, the continuing appropriateness and extent of compliance with the permanent plan for the child, the extent of compliance with the case plan, and the adequacy of services provided to the child. The review shall also include a determination of the services needed to assist a child who is 16 years of age or older make the transition from foster care to independent living.

Each licensed foster family agency shall submit reports for each minor in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the minor's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the minor.

Unless their parental rights have been permanently terminated, the parent or parents of the minor are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the interests of the minor, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the minor. In those cases, the court may order that further reunification services be provided to the parent or parents for a period not to exceed six months.

4094. Program standards for community treatment facilities

- (a) The State Department of Mental Health shall establish, by regulations adopted at the earliest possible date, but no later than December 31, 1994, program standards for any facility licensed as a community treatment facility. This section shall apply only to community treatment facilities described in this subdivision.
- (b) A certification of compliance issued by the State Department of Mental Health shall be a condition of licensure for the community treatment facility by the State Department of Social Services. The department may, upon the request of a county, delegate the certification and supervision of a community treatment facility to the county department of mental health.
- (c) The State Department of Mental Health shall adopt regulations to include, but not be limited to, the following:
 - (1) Procedures by which the Director of Mental Health shall certify that a facility requesting licensure as a community treatment facility pursuant to Section 1502 of the Health and Safety Code is in compliance with program standards established pursuant to this section.
 - (2) Procedures by which the Director of Mental Health shall deny a certification to a facility or decertify a facility licensed as a community treatment facility pursuant to Section 1502 of the Health and Safety Code, but no longer complying with program standards established pursuant to this section, in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
 - (3) Provisions for site visits by the State Department of Mental Health for the purpose of reviewing a facility's compliance with program standards established pursuant to this section.
 - (4) Provisions for the community care licensing staff of the State Department of Social Services to report to the State Department of Mental Health when there is reasonable cause to believe that a community treatment facility is not in compliance with program standards established pursuant to this section.
 - (5) Provisions for the State Department of Mental Health to provide consultation and documentation to the State Department of Social Services in any administrative proceeding regarding denial, suspension, or revocation of a community treatment facility license.
- (d) The standards adopted by regulations pursuant to subdivision (a) shall include, but not be limited to, standards for treatment staffing and for the use of psychotropic medication, discipline, and restraint in the facilities. The standards shall also meet the requirements of Section 4094.5.

- (e) During the initial public comment period for the adoption of the regulations required by this section, the community care facility licensing regulations proposed by the State Department of Social Services and the program standards proposed by the State Department of Mental Health shall be presented simultaneously.
- (f) A minor shall be admitted to a community treatment facility only if the requirements of Section 4094.5 and either of the following condition is met:
 - (1) The minor is within the jurisdiction of the juvenile court, and has made voluntary application for mental health services pursuant to Section 6552.
 - (2) Informed consent is given by a parent, guardian, conservator, or other person having custody of the minor.
- (g) Any minor admitted to a community treatment facility shall have the same due process rights afforded to a minor who may be admitted to a state hospital, pursuant to the holding in *In re Roger S.* (1977) 19 Cal. 3d 921. Minors who are wards or dependents of the court and to whom this subdivision applies shall be afforded due process in accordance with Section 6552 and related case law, including *In re Michael E.* (1975) 15 Cal. 3d 183. Regulations adopted pursuant to Section 4094 shall specify the procedures for ensuring these rights, including provisions for notification of rights and the time and place of hearings.
- (h) Notwithstanding Section 13340 of the Government Code, the sum of forty-five thousand dollars (\$45,000) is hereby appropriated annually from the General Fund to the State Department of Mental Health for one personnel year to carry out the provisions of this section.

4094.5. Placement and containment of children in a community treatment facility

Regulations for community treatment facilities adopted pursuant to Section 4094 shall include, but not be limited to, the following:

- (a) Only seriously emotionally disturbed children, as defined in Section 5699.2, for whom other less restrictive mental health interventions have been tried, as documented in the case plan, or who are currently placed in an acute psychiatric hospital or state hospital or in a facility outside the state for mental health treatment, and who may require periods of containment to participate in, and benefit from, mental health treatment, shall be placed in a community treatment facility. For purposes of this subdivision, lesser restrictive interventions shall include, but are not limited to, outpatient therapy, family counseling, case management, family preservation efforts, special education classes, or nonpublic schooling.
- (b) A facility shall have the capacity to provide secure containment. For purposes of this section, a facility or an area of a facility shall be defined as secure if residents are not permitted to leave the premises of their own volition. All or part of a facility, including its perimeter, but not a room alone, may be locked or secure. If a facility uses perimeter fencing, all beds within the perimeter shall be considered secure beds. All beds outside of a locked or secure wing or facility shall be considered nonsecure beds.

- (c) A locked or secure program in a facility shall not be used for disciplinary purposes, but shall be used for the protection of the minor. It may be used as a treatment modality for a child needing that level of care. The use of the secure facility program shall be for as short a period as possible, consistent with the child's case plan and safety. The department shall develop regulations governing the oversight, review, and duration of the use of secure beds.
- (d) Fire clearance approval shall be obtained pursuant to Section 1531.2 of the Health and Safety Code.
- (e)
 - (1) Prior to admission, any child admitted to a community treatment facility shall have been certified as seriously emotionally disturbed, as defined in Section 5699.2, by a licensed mental health professional. The child shall, prior to admission, have been determined to be in need of the level of care provided by a community treatment facility, by a county interagency placement committee, as prescribed by Section 4096.
 - (2) Any county cost associated with the certification and the determination provided for in paragraph (1) may be billed as a utilization review expense.

4094.6. Patient's rights

The patients' rights provisions contained in Sections 5325, 5325.1, 5325.2, and 5326 shall be available to any child admitted to, or eligible for admission to, a community treatment facility. Every child placed in a community treatment facility shall have a right to a hearing by writ of habeas corpus, within two judicial days of the filing of a petition for the writ of habeas corpus with the superior court of the county in which the facility is located, for his or her release. Regulations adopted pursuant to Section 4094 shall specify the procedures by which this right shall be ensured. These regulations shall generally be consistent with the procedures contained in Section 5275 et seq., concerning habeas corpus for individuals, including children, subject to various involuntary holds.

4094.7. Community care facilities criteria and certification

- (a) A community treatment facility may have both secure and nonsecure beds. However, the State Department of Mental Health shall limit the total number of beds in community treatment facilities to not more than 400 statewide. The State Department of Mental Health shall certify community treatment facilities in such a manner as to ensure an adequate dispersal of these facilities within the state. The State Department of Mental Health shall ensure that there is at least one facility in each of the State Department of Social Services' four regional licensing divisions.
- (b) The State Department of Mental Health shall notify the State Department of Social Services when a facility has been certified and has met the program standards pursuant to Section 4094. The State Department of Social Services shall license a community treatment facility for a specified number of secure beds and a specified number of nonsecure beds. The number of secure and nonsecure beds in a facility shall be modified only with the approval of both the State Department of Social Services and the State Department of Mental Health.
- (c) The State Department of Mental Health shall develop, with the advice of the State Department of Social Services, county representatives, providers, and interested parties, the criteria to be used to determine which programs among applicant providers shall be licensed. The State Department of Mental Health shall determine which agencies best meet the criteria, certify them in accordance with Section 4094, and refer them to the State Department of Social Services for licensure.
- (d) Any community treatment facility proposing to serve seriously emotionally disturbed foster children shall be incorporated as a nonprofit organization.
- (e) No later than January 1, 1996, the State Department of Mental Health shall submit its recommendation to the appropriate policy committees of the Legislature relative to the limitation on the number of beds set forth in this section.

5585.58. Funding

This part shall be funded under the Bronzan-McCorquodale Act pursuant to Part 2 (commencing with Section 5600), as part of the county performance contract.

5600.3. Mental health account funds; populations targeted for use

To the extent resources are available, the primary goal of use of funds deposited in the mental health account of the local health and welfare trust fund should be to serve the target populations identified in the following categories, which shall not be construed as establishing an order of priority:

- (a) (1) Seriously emotionally disturbed children or adolescents.
- (2) For the purposes of this part, "seriously emotionally disturbed children or adolescents" means minors under the age of 18 years who have a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, other than a primary substance use disorder or developmental disorder, which results in behavior inappropriate to the child's age according to expected developmental norms. Members of this target population shall meet one or more of the following criteria:
 - (A) As a result of the mental disorder the child has substantial impairment in at least two of the following areas: self-care, school functioning, family relationships, or ability to function in the community; and either of the following occur:
 - (i) The child is at risk of removal from home or has already been removed from the home.
 - (ii) The mental disorder and impairments have been present for more than six months or are likely to continue for more than one year without treatment.
 - (B) The child displays one of the following: psychotic features, risk of suicide or risk of violence due to a mental disorder.
 - (C) The child meets special education eligibility requirements under Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.
- (b) (1) Adults and older adults who have a serious mental disorder.
- (2) For the purposes of this part "serious mental disorder" means a mental disorder which is severe in degree and persistent in duration, which may cause behavioral functioning which interferes substantially with the primary activities of daily living, and which may result in an inability to maintain stable adjustment and independent functioning without treatment, support, and rehabilitation for a long or indefinite period of time. Serious mental disorders include, but are not limited to, schizophrenia, as well as major affective disorders or other severely disabling mental disorders. This section shall not be construed to exclude persons with a serious mental disorder and a diagnosis of substance abuse, developmental disability, or other physical or mental disorder.